

ability, including the consumer's current and expected income, current obligations, and employment. There is a presumption that a creditor has violated this paragraph (a)(4) if the creditor engages in a pattern or practice of making loans subject to §226.32 without verifying and documenting consumers' repayment ability.

(b) *Prohibited acts or practices for dwelling-secured loans; open-end credit.* In connection with credit secured by the consumer's dwelling that does not meet the definition in §226.2(a)(20), a creditor shall not structure a home-secured loan as an open-end plan to evade the requirements of §226.32.

[Reg. Z, 66 FR 65618, Dec. 20, 2001]

#### § 226.35 [Reserved]

### Subpart F—Electronic Communication

#### § 226.36 Requirements for electronic communication.

(a) *Definition.* "Electronic communication" means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 *et seq.*) and the rules of this part, a creditor may provide by electronic communication any disclosure required by this part to be in writing.

(c) *When consent is required.* Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under §§ 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24 are deemed not to be related to a transaction.

(d) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(3) *Exceptions.* A creditor need not comply with paragraphs (d)(2)(i) and (ii) of this section for the disclosures required under §§ 226.5a, 226.5b(d) and 226.5b(e), 226.16, 226.17(g)(1) through (5), 226.19(b) and 226.24.

(e) *Redelivery.* When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.

(f) *Electronic signatures.* An electronic signature as defined under the E-Sign satisfies any requirement under this part for a consumer's signature or initials.

[Reg. Z, 66 FR 17339, Mar. 30, 2001]

#### APPENDIX A TO PART 226—EFFECT ON STATE LAWS

##### REQUEST FOR DETERMINATION

A request for a determination that a State law is inconsistent or that a State law is substantially the same as the Act and regulation shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall be made pursuant to the procedures herein and the Board's Rules of Procedure (12 CFR Part 262).

##### SUPPORTING DOCUMENTS

A request for a determination shall include the following items:

(1) The text of the State statute, regulation, or other document that is the subject of the request.

(2) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision.